

(2) Section 2, chapter 4, Laws of 1982, section 1 of this act and RCW 43.121.020;

(3) Section 3, chapter 4, Laws of 1982 and RCW 43.121.030;

(4) Section 4, chapter 4, Laws of 1982 and RCW 43.121.040;

(5) Section 5, chapter 4, Laws of 1982 and RCW 43.121.050;

(6) Section 6, chapter 4, Laws of 1982 and RCW 43.121.060;

(7) Section 7, chapter 4, Laws of 1982 and RCW 43.121.070;

(8) Section 8, chapter 4, Laws of 1982 and RCW 43.121.080;

(9) Section 9, chapter 4, Laws of 1982, section 2 of this act and RCW 43.121.090;

(10) Section 10, chapter 4, Laws of 1982, section 3 of this act and RCW 43.121.100; and

(11) Section 15, chapter 4, Laws of 1982 and RCW 43.121.910.

NEW SECTION. Sec. 7. Section 11, chapter 4, Laws of 1982 and RCW 43.121.900 are each repealed.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 3, 1984.

Passed the House February 25, 1984.

Approved by the Governor March 28, 1984.

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CHAPTER 262

[Engrossed Senate Bill No. 4309]

SEXUAL EXPLOITATION OF CHILDREN

AN ACT Relating to sexual exploitation of children; adding new sections to chapter 9.68A RCW; repealing section 1, chapter 53, Laws of 1980 and RCW 9.68A.010; repealing section 2, chapter 53, Laws of 1980 and RCW 9.68A.020; repealing section 3, chapter 53, Laws of 1980 and RCW 9.68A.030; repealing section 5, chapter 53, Laws of 1980 and RCW 9.68A.900; repealing section 9A.88.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.44.110; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. The legislature finds that the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. The care of children is a sacred trust and should not be abused by those who seek commercial gain or personal gratification based on the exploitation of children.

The legislature further finds that the protection of children from sexual exploitation can be accomplished without infringing on a constitutionally protected activity. The definition of "sexually explicit conduct" and other operative definitions demarcate a line between protected and prohibited

conduct and should not inhibit legitimate scientific, medical, or educational activities.

NEW SECTION. Sec. 2. Unless the context clearly indicates otherwise, the definitions in this section apply throughout the chapter.

(1) To "photograph" means to make a print, negative, slide, motion picture, or videotape. A "photograph" means any tangible item produced by photographing.

(2) "Visual or printed matter" means any photograph or other material that contains a reproduction of a photograph.

(3) "Sexually explicit conduct" means actual or simulated:

(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;

(b) Penetration of the vagina or rectum by any object;

(c) Masturbation, for the purpose of sexual stimulation of the viewer;

(d) Sadomasochistic abuse for the purpose of sexual stimulation of the viewer;

(e) Exhibition of the genitals or unclothed pubic or rectal areas of any minor for the purpose of sexual stimulation of the viewer;

(f) Defecation or urination for the purpose of sexual stimulation of the viewer; and

(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.

NEW SECTION. Sec. 3. (1) A person is guilty of sexual exploitation of a minor if the person:

(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;

(b) Aids or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or

(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.

(2) Sexual exploitation of a minor is:

(a) A class B felony punishable under chapter 9A.20 RCW if the minor exploited is less than sixteen years old at the time of the offense; and

(b) A class C felony punishable under chapter 9A.20 RCW if the minor exploited is at least sixteen years old but less than eighteen years old at the time of the offense.

NEW SECTION. Sec. 4. A person who:

(1) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct; or

(2) Possesses with intent to develop, duplicate, publish, print, disseminate, exchange, or sell any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct

is guilty of a class C felony punishable under chapter 9A.20 RCW.

(i) As used in this section, "minor" means a person under sixteen years of age.

NEW SECTION. Sec. 5. (1) A person who knowingly sends or causes to be sent, or brings or causes to be brought, into this state for sale or distribution, any visual or printed matter that depicts a minor engaged in sexually explicit conduct is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under sixteen years of age.

NEW SECTION. Sec. 6. (1) A person who knowingly possesses visual or printed matter depicting a minor engaged in sexually explicit conduct is guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age.

NEW SECTION. Sec. 7. (1) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the proper law enforcement agency. Persons failing to do so are guilty of a gross misdemeanor.

(2) As used in this section, "minor" means a person under sixteen years of age.

NEW SECTION. Sec. 8. (1) A person who communicates with a minor for immoral purposes is guilty of a gross misdemeanor, unless that person has previously been convicted of a felony sexual offense under chapter 9.68A, 9A.44, or 9A.64 RCW or of any other felony sexual offense in this or any other state, in which case the person is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under sixteen years of age.

NEW SECTION. Sec. 9. (1) A person is guilty of patronizing a juvenile prostitute if that person engages or agrees or offers to engage in sexual conduct with a minor in return for a fee, and is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) As used in this section, "minor" means a person under eighteen years of age.

NEW SECTION. Sec. 10. (1) In a prosecution under section 3 of this act, it is not a defense that the defendant was involved in activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses. Law enforcement and prosecution agencies shall not employ minors to aid in the investigation of a violation of section 8 or 9 of this act. This chapter does not apply to individual case treatment in a recognized medical facility or individual case treatment by a psychiatrist or psychologist licensed under Title 18 RCW, or to lawful conduct between spouses.

(2) In a prosecution under section 4, 5, 6, or 7 of this act, it is not a defense that the defendant did not know the age of the child depicted in the visual or printed matter: **PROVIDED**, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense the defendant was not in possession of any facts on the basis of which he or she should reasonably have known that the person depicted was a minor.

(3) In a prosecution under section 3 or 9 of this act, it is not a defense that the defendant did not know the alleged victim's age: **PROVIDED**, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least eighteen years of age based on declarations by the alleged victim.

(4) In a prosecution under section 4, 5, or 8 of this act, it is not a defense that the defendant did not know the alleged victim's age: **PROVIDED**, That it is a defense, which the defendant must prove by a preponderance of the evidence, that at the time of the offense, the defendant reasonably believed the alleged victim to be at least sixteen years of age based on declarations by the alleged victim.

(5) In a prosecution under section 4, 5, or 6 of this act, the state is not required to establish the identity of the alleged victim.

NEW SECTION. Sec. 11. The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of section 4 or 5 of this act, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items

within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the criminal justice training account established under RCW 43.101.210 which shall be appropriated by law to the Washington state criminal justice training commission and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law.

NEW SECTION. Sec. 12. A minor prevailing in a civil action arising from violation of this chapter is entitled to recover the costs of the suit, including an award of reasonable attorneys' fees.

NEW SECTION. Sec. 13. The following acts or parts of acts are each repealed:

- (1) Section 1, chapter 53, Laws of 1980 and RCW 9.68A.010;
- (2) Section 2, chapter 53, Laws of 1980 and RCW 9.68A.020;
- (3) Section 3, chapter 53, Laws of 1980 and RCW 9.68A.030;
- (4) Section 5, chapter 53, Laws of 1980 and RCW 9.68A.900; and
- (5) Section 9A.88.020, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.44.110.

NEW SECTION. Sec. 14. Sections 1 through 12 of this act are each added to chapter 9.68A RCW.

NEW SECTION. Sec. 15. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate March 5, 1984.

Passed the House March 5, 1984.

Approved by the Governor March 28, 1984.

Filed in Office of Secretary of State March 28, 1984.

CHAPTER 263

[Substitute Senate Bill No. 4541]

DOMESTIC VIOLENCE PREVENTION ACT

AN ACT Relating to domestic violence; amending section 9A.36.040, chapter 260, Laws of 1975 1st ex. sess. and RCW 9A.36.040; amending section 1, chapter 198, Laws of 1969 ex. sess. as last amended by section 1, chapter 106, Laws of 1981 and RCW 10.31.100; amending section 2, chapter 105, Laws of 1979 ex. sess. and RCW 10.99.020; amending section 3, chapter 105, Laws of 1979 ex. sess. as amended by section 5, chapter 145, Laws of 1981 and RCW 10.99.030; amending section 4, chapter 105, Laws of 1979 ex. sess. as last amended by section 7, chapter 232, Laws of 1983 and RCW 10.99.040; amending section 7, chapter 145, Laws of 1981 as amended by section 8, chapter 232, Laws of 1983 and RCW 10.99.045; amending section 5, chapter 105, Laws of 1979 ex. sess. and RCW 10.99.050; amending section 8, chapter 145, Laws of 1981 as amended by section 9, chapter 232, Laws of 1983 and RCW 10.99.055; amending section 6, chapter 157, Laws of 1973 1st ex. sess. as last amended by section 1, chapter 41, Laws of 1983 1st ex. sess. and RCW 26.09.060; amending section 18, chapter 157, Laws of 1973 1st ex. sess. and RCW 26.09.180; amending section 1, chapter 99, Laws of 1974 ex. sess. and RCW 26.09.300; amending section 1, chapter 38, Laws of 1973 as last amended by section 5, chapter 330, Laws of 1981 and RCW 36.18.020; adding a new chapter to Title 26 RCW; creating a new section; prescribing penalties; and providing an effective date.

Be it enacted by the Legislature of the State of Washington: